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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 500

UNITED STATES OF AMERICA, APPELLANT,

vs.

FLOYD DIXON

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA

FILED DECEMBER 17, 1953

Probable jurisdiction noted January 11, 1954

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 500

UNITED STATES OF AMERICA, APPELLANT,

vs.

FLOYD DIXON

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA

INDEX

1 In United States District Court, Northern District of Georgia, Gainesville Division

No. 4716

UNITED STATES OF AMERICA

vs.

FLOYD DIXON

INDICTMENT—Filed September 9, 1953

The Grand Jury charges:

COUNT ONE

That, on or about May 4, 1953, in the Gainesville Division of the Northern Judicial District of Georgia, FLOYD DIXON did unlawfully, wilfully and knowingly have and possess 800 pounds of sugar, two 50-gallon wood doubling barrels, one metal cap, one heater box and mash pipe, the same being property intended for use in the manufacture and production of non-tax-paid distilled spirits, in violation of the Internal Revenue Laws with respect to such distilled spirits, in violation of Sections 3116 and 3115, Title 26, U. S. C.

A True Bill:

(S.) RAYMOND INGLETT,
Foreman.

(S.) JAMES W. DORSEY,
United States Attorney.

(S.) J. ELLIS MUNDY,
Assistant United States Attorney.

[File endorsement omitted.]

2 In United States District Court, Northern District of Georgia

OPINION—Filed October 21st, 1953

The defendant, Floyd Dixon, has moved for a dismissal of the indictment in the above stated case upon the ground that Section 3116 of Title 26 U. S. C. A., upon which the indictment is based is preventative and remedial rather than criminal, and that therefore the indictment fails to charge an offense against the laws of the United States.

The contention of the defendant seems to be sustained by the federal appellate courts. In the case of *Kent* v. *U. S.* (Fifth Cir.), 157 F. 2d 1, the Court said:

> "The seizure for forfeiture here is not in consequence of or in punishment for a crime, but to prevent one. The proceed-

ing is preventative and remedial, rather than punitive or criminal."

On a motion for rehearing in the above case, wherein it was urged that the proceeding for forfeiture should be treated as a criminal case on the ground that the opinion in the case of *Boyd* v. *U. S.*, 116 U. S. 616, required the forfeiture to be so treated, the Court said:

"We do not think so. In Boyd's case a criminal offense was directly involved and must have been committed to cause the forfeiture . . .

"In this case no crime was committed."

The above holding is construed as a holding by the Court of Appeals for this Circuit that Section 3116 of Title 26, U. S. C. A., does not define a criminal offense. See also, *Anderson* v. *U. S.* (Fifth Circuit), 158 F. 2d 196; *U. S.* v. *One Plymouth Coupe*, 88 F. Supp. 93. Since the question was not raised in that case, the case of *Goddette* v. *U. S.*, 199 F. 2d 331, is not authority to the contrary.

This Court being of the opinion that Section 3116 of Title
3 26, U. S. C. A., is preventative and remedial rather than criminal, and that it does not define a criminal offense, it is

ORDERED that the motion of the defendant to dismiss the indictbe, and the same is hereby, granted, and said indictment is hereby dismissed.

This the 21st day of October, 1953.

(S.) BOYD SLOAN,
United States District Judge.

4 In United States District Court

NOTICE OF APPEAL—Filed November 19, 1953

The United States hereby appeals to the Supreme Court of the United States from the order of the United States District Court for the Northern District of Georgia, entered October 21, 1953, dismissing the indictment in the above-entitled case.

(S.) ROBERT L. STERN,
Acting Solicitor General,
Department of Justice,
Washington, D. C.

Dated: 19 November 1953.

5 Notification to Appellee under Rule 12 (Omitted in printing)

6 In United States District Court

DOCKET ENTRIES

Sep. 9, 1953. Indictment filed and entered.
Sep. 14, 1953. Filing 1 Commissioner's paper.
Oct. 5, 1953. Plea guilty entered; sentence deferred.
Oct. 5, 1953. Filing reporter's stenotype notes on 10-5-53.
Oct. 21, 1953. Motion of defendant to withdraw plea of guilty & order allowing same.
Oct. 21, 1953. Verbal motion of defendant's counsel to dismiss indictment.
Oct. 21, 1953. Order of dismissal filed. (2 copies mailed counsel.)
Oct. 21, 1953. Filing reporter's stenotype notes on 10/21/53.
Nov. 19, 1953. Notice of appeal and statement of jurisdiction filed by United States. Copy mailed attorney for defendant.
Nov. 25, 1953. Designation of record on appeal, filed.
Dec. 2, 1953. Amended designation of record, filed.
Dec. 2, 1953. Acknowledgment of service in re Notice of Appeal and Statement as to Jurisdiction.

Attest:

F. L. BEERS,
Clerk,
(S.) By R. C. MCCLURE,
Deputy Clerk.

7 In United States District Court

DESIGNATION OF CONTENTS OF THE RECORD ON APPEAL—Filed November 25, 1953

The United States of America hereby designates as being material to an understanding of the questions on appeal the following contents of the record on appeal in the above entitled case:

1. The Indictment.
* 2. Motion to Dismiss.
3. Opinion of the District Court and Order Dismissing the Indictment.
4. All docket entries.
5. Notice of Appeal.
6. Statement as to jurisdiction.
7. Notification to appellee with acknowledgment of service thereon from counsel for appellee and filing entries thereon.

8. This Designation of Record, together with filing entries and certificate of counsel as to service on appellee.

This the 25th day of November, 1953.

(S.) JAMES W. DORSEY,
United States Attorney,

(S.) J. ELLIS MUNDY,
Assistant United States Attorney,
Counsel for Appellant,
By authority of the Attorney General and the Acting Solicitor General of the United States.

* Note: Item No. 2 was a verbal motion—see docket entries.

8 Certificate of Service (omitted in printing).

9 In United States District Court

AMENDED DESIGNATION OF CONTENTS OF THE RECORD ON APPEAL—
Filed December 2, 1953

The United States of America hereby amends its Designation of Contents of Record heretofore filed by adding to the designation number 2 the following:

"and reporter's transcript of hearing on said motion",

which is hereby designated to likewise become a part of the record on appeal.

This 2nd day of December, 1953.

(S.) JAMES W. DORSEY,
United States Attorney,

(S.) J. ELLIS MUNDY,
Assistant United States Attorney,
Counsel for Appellant,
By authority of the Attorney General and the Acting Solicitor General of the United States.

Certificate of Service (omitted in printing).

10 In United States District Court

FURTHER AMENDED DESIGNATION OF CONTENTS OF THE RECORD ON APPEAL—Filed December 4, 1953

The United States of America hereby further amends its Designation of Contents of Record on Appeal heretofore filed by striking the Amended Designation of Contents of the Record in its entirety, which amended designation designated the reporter's transcript of the hearing on said motion, it now appearing that the said reporter's transcript is not pertinent to an understanding of the record in this case; so that the only contents of the record designated as pertinent on this appeal are the parts designated in the original Designation of Record first filed.

This the 4th day of December, 1953.

(S.) JAMES W. DORSEY,
United States Attorney.

(S.) J. ELLIS MUNDY,
Assistant United States Attorney,
Counsel for Appellant,
By authority of the Attorney General and the Acting Solicitor General of the United States.

11-12 Judge's and Clerk's Certificate (omitted in printing).

13 In the Supreme Court of the United States, October Term, 1953

No. 500

UNITED STATES OF AMERICA, APPELLANT

v.

FLOYD DIXON

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF RECORD—Filed January 6, 1954

Pursuant to Rule 13, Paragraph 9, of this Court, appellant states that it intends to rely upon the following points:

1. The District Court erred in holding that 26 U.S.C. 3116 is merely preventative and remedial and therefore fails to define a criminal offense.

2. The District Court erred in dismissing the indictment.

Appellant deems the entire record, as filed in the above-entitled case, necessary for the consideration of the points relied upon.

ROBERT L. STERN,
Acting Solicitor General.

January 6, 1954.

14-15 [File endorsement omitted.]

16 Supreme Court of the United States

16 Supreme Court of the United States, October Term, 1953

No. 500

[Title omitted]

ORDER NOTING PROBABLE JURISDICTION—January 11, 1954

Appeal from the United States District Court for the Northern District of Georgia

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the summary docket.

☆ U. S. GOVERNMENT PRINTING OFFICE 1954 206455 828

In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 500

UNITED STATES OF AMERICA, APPELLANT

v.

FLOYD DIXON

STATEMENT AS TO JURISDICTION

In compliance with Rule 37(a)(1) of the Federal Rules of Criminal Procedure and Rule 12 of the Rules of the Supreme Court of the United States, as amended, the United States submits herewith its statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the order of the District Court in this cause dismissing the indictment.

OPINION BELOW

The opinion of the District Court dismissing the indictment has not been reported. A copy of the opinion is attached hereto as an Appendix.

JURISDICTION

The order of the District Court dismissing the indictment was entered on October 21, 1953. The

jurisdiction of the Supreme Court to review on direct appeal the order of the District Court dismissing an indictment, based on a construction of a statute upon which the indictment was founded, is conferred by 18 U. S. C. 3731. See also Rules 37(a)(2) and 45(a), F. R. Crim. P.

QUESTION PRESENTED

Whether the statute on which the indictment was founded, 26 U. S. C. 3116, is merely preventative and remedial or whether it defines a criminal offense, the penalties for which are prescribed in 26 U. S. C. 3115.

STATUTES IN QUESTION

Sections 3115 and 3116 of the Internal Revenue Code provide:

> Sec. 3115. Penalties
>
> (a) Violations as to operation of plants or unlawful withdrawal of taxable alcohol. Whoever operates an industrial alcohol plant or a denaturing plant without complying with the provisions of this part and lawful regulations made thereunder, or whoever withdraws or attempts to withdraw or secure tax free any alcohol subject to tax, or whoever otherwise violates any of the provisions of this part or of regulations lawfully made thereunder shall be liable, for the first offense, to a penalty of not exceeding $1,000, or imprisonment not exceeding thirty days, or both, and for a second or cognate offense to a penalty of not less than $100 nor more than $10,000, and to imprison-

ment of not less than thirty days nor more than one year. It shall be lawful for the Commissioner in all cases of second or cognate offense to refuse to issue for a period of one year a permit for the manufacture or use of alcohol upon the premises of any person responsible in any degree for the violation.

(b) Violations in general. Any person violating the provisions of this part or of any regulations issued thereunder, for which offense a special penalty is not prescribed, shall be liable to the penalty or penalties prescribed in subsection (a). It shall be the duty of the prosecuting officer to ascertain, in the case of every violation of this part or the regulations made thereunder, for which offense a special penalty is not prescribed, whether the defendant has been previously convicted and to plead the prior conviction in the affidavit, information, or indictment.

(c) Previous conviction. If any act or offense is a violation of this part, and also of any other law in regard to the manufacture or taxation of, or traffic in, intoxicating liquor, a conviction for such act or offense under the one shall be a bar to prosecution therefor under the other. 53 Stat. 362.

Sec. 3116. Forfeitures and seizures

It shall be unlawful to have or possess any liquor or property intended for use in violating the provisions of this part, or the internal-revenue laws, or regulations prescribed under such part or laws, or which has been so used, and no property rights shall exist in any such

liquor or property. A search warrant may issue as provided in title XI of the Act of June 15, 1917, 40 Stat. 228 (U.S.C. Title 18, §§ 611-633), for the seizure of such liquor or property. Nothing in this section shall in any manner limit or affect any criminal or forfeiture provision of the internal-revenue laws, or of any other law. The seizure and forfeiture of any liquor or property under the provisions of this part, and the disposition of such liquor or property subsequent to seizure and forfeiture, or the disposition of the proceeds from the sale of such liquor or property, shall be in accordance with existing laws or those hereafter in existence relating to seizures, forfeitures, and disposition of property or proceeds, for violation of the internal-revenue laws. 53 Stat. 362.

STATEMENT

On September 9, 1953, an indictment in one count charging a violation of Sections 3115 and 3116 of the Internal Revenue Code was returned against defendant in the District Court for the Northern District of Georgia. The indictment charged the defendant with the possession of property (parts of a still and distilling materials) intended for use in violating the provisions of the internal revenue laws.

The District Court granted the defendant's motion to dismiss the indictment. In its opinion, it held that Section 3116 is preventive and remedial rather than criminal, and that it does not define a criminal offense.

THE QUESTION IS SUBSTANTIAL

In holding that Section 3116 of the Internal Revenue Code is merely preventive and remedial rather than criminal, and that it does not define a criminal offense, the decision below seriously hampers the effective administration and enforcement of the internal revenue laws with respect to liquor. The primary purpose in enacting this section was to condemn attempts to violate the internal revenue laws, especially the setting up of illicit distilleries. Enforcement officers frequently had knowledge that known violators were assembling parts of a still, equipment, and paraphernalia for illicit distilling, etc., but had to wait until the still was actually assembled or in operation before anything could be done about it. It was intended that the possession of these items with intent to violate the internal revenue law be punished.

This intent is plainly embodied in the statute Congress enacted. Section 3116 of the Internal Revenue Code makes it "unlawful to have or possess any liquor or property intended for use in violating (Part II, Subchapter C ("Industrial Alcohol"), of Chapter 26 ("Liquor")), or the internal revenue laws, or regulations prescribed under such laws * * *." Section 3115(b) provides that "Any person violating the provisions of this part (which includes Section 3116) * * *, for which offense a special penalty is not prescribed, shall be liable to the penalty or penalties prescribed in subsection (a)." Thus, Section 3116 clearly defines a criminal offense the penalty for which is

fixed by Section 3115. The identical language in Section 25 of the National Prohibition Act was treated as a criminal statute in several cases. *Morgan* v. *United States*, 294 Fed. 82 (C. A. 4); *Patrilo* v. *United States*, 7 F. 2d 804 (C. A. 8); *Adamson* v. *United States*, 296 Fed. 110 (C. A. 5). And we are aware of no case, other than the instant one, which holds that Section 3116 does not define a criminal offense. On the contrary, two district courts have specifically held that it is a criminal statute. *United States* v. *Harvin, et al.*, 91 F. Supp. 249 (E. D. Va.); *United States* v. *Blair*, 97 F. Supp. 718 (E. D. Ky.). The Fourth Circuit also has affirmed a criminal conviction under this statute. *Godette* v. *United States*, 199 F. 2d 331.

Both the District Court for the Eastern District of Virginia in *United States* v. *Harvin, supra*, and the District Court for the Eastern District of Kentucky in *United State* v. *Blair, supra*, pointed out that the having or possession of property intended for use in violating the internal revenue laws is made "unlawful" by Section 3116. Both courts recognized that Section 3115 penalizes the violation of the provisions of Part II of the Act, which includes 3116. "Together they define a crime, 3116 describing the unlawful act, 3115(a) prescribing the punishment." 91 F. Supp. at 250; 97 F. Supp. at 719.

The court below, in the instant case, appears to have based its ruling on the language used by the Fifth Circuit in *Kent* v. *United States*, 157 F. 2d 1, 2, where the court said:

> The seizure for forfeiture here is not in consequence of or in punishment for a crime, but to prevent one. The proceeding is preventive and remedial, rather than punitive or criminal.

However, the issue of whether or not Section 3116 was a criminal measure was not before the Fifth Circuit. The "proceeding" before it was simply an action *in rem* for the forfeiture of the property that had been seized, as was the situation in the other cases cited by the Court below. As a matter of fact, in *Adamson* v. *United States, supra*, the Fifth Circuit treated the same provision in the National Prohibition Act as a criminal measure.

The doubt concerning the intendment of the statute as a criminal measure seems to stem from the fact that in proscribing the possession of the property held with intent to violate the liquor laws, no penalty is prescribed within the confines of Section 3116 itself, although it does provide that no property rights shall exist in such property, thereby, in effect providing for its forfeiture. There is, however, nothing unusual about a pattern of legislation by which certain acts are made unlawful by one section of a statute and the penalty for such unlawful conduct is prescribed by another. Thus Section 15 of the Fair Labor Standards Act (29 U. S. C. 215) makes it unlawful for any person to violate certain other sections of the Act, and then Section 16(a) imposes a criminal penalty on any person willfully violating Section 15. In the Internal Revenue Code itself, with relation to nar-

cotics, Sections 2553 and 2554 make certain acts unlawful, and the penalty is prescribed by Section 2557(b) as to "Any person who violates or fails to comply with any of the requirements" of the statute. That is the pattern which was followed in the National Prohibition Act (see *Page* v. *United States*, 278 Fed. 41, 44 (C. A. 9), certiorari denied, 258 U. S. 627) and was carried over into the statute here involved.

This conclusion, clear enough from the statutory language, is confirmed by the legislative history. Section 3116 is derived from the Act of August 27, 1935, the Liquor Law Repeal and Enforcement Act, 49 Stat. 872. A similar provision, making it unlawful to have or possess any liquor or property intended for use in violating the provisions of the National Prohibition Act, along with several other provisions of that Act, had fallen with the repeal of the Eighteenth Amendment. That Section 8 of the Liquor Law Repeal and Enforcement Act, from which Section 3116 of the Internal Revenue Code is derived, was intended to fill one of the gaps left by the repeal of the National Prohibition Act and to condemn, with criminal sanctions, attempts to violate the internal revenue laws, is clear from the legislative history.

During the hearings before the Senate Committee on the Judiciary, Mr. V. Simonton, a Treasury Department representative who had to do with the drafting of the provision in question was asked by the Chairman of the Committee to point

out new legislation in the bill. He explained its purpose and intent as follows:

Mr. SIMONTON: The old act read in section 25:

"It shall be unlawful to have or possess any liquor or property intended for use in violating the provisions of this title."

We have extended that to include the possession of liquor or property intended for use in violating the provisions of Title III of the National Prohibition Act and of the Internal-revenue laws. For the first time we have proposed legislation condemning an attempt to violate the internal-revenue laws.

At the present time it is not an offense against the United States to attempt to violate the internal-revenue laws. It is a conspiracy, of course, but an attempt to do so is not strictly a violation of the law.

The CHAIRMAN: What do you declare to be an attempt?

Mr. SIMONTON: Assembling parts of a still, assembling barrels, paraphernalia, cracking plant. We know all those things are being done. We know of a place in New Jersey where they have a dozen stills being assembled.

The CHAIRMAN: And the evidence of the intent might be manifested by the nature and amount of assembled material?

Mr. SIMONTON: Yes, the surreptitious handling of it. Now we have to wait until the still is assembled and set up before we can do any-

thing. This proposed provision is along the line of modern legislation.

We submit that the statute Congress enacted clearly accomplishes the objective of its proponents. The history shows that Congress intended to define an offense in Section 3116. Plainly covered by the punishment provisions of Section 3115, the conduct described in Section 3116 is a crime against the United States.

It is submitted that the decision of the District Court is erroneous and that the question presented by this appeal is a substantial one which should be settled by the Supreme Court.

Respectfully submitted,

(S.) ROBERT L. STERN,
Acting Solicitor General.

APPENDIX "A"

OPINION OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA AND ORDER DISMISSING INDICTMENT—Filed October 21st, 1953

The defendant, Floyd Dixon, has moved for a dismissal of the indictment in the above stated case upon the ground that Section 3116 of Title 26 U. S. C. A., upon which the indictment is based is preventative and remedial rather than criminal, and that therefore the indictment fails to charge an offense against the laws of the United States.

The contention of the defendant seems to be sustained by the federal appellate courts. In the case of Kent v. U. S. (Fifth Cir.), 157 F. 2d 1, the Court said:

> "The seizure for forfeiture here is not in consequence of or in punishment for a crime, but to prevent one. The proceeding is preventative and remedial, rather than punitive or criminal."

On a motion for rehearing in the above case, wherein it was urged that the proceeding for forfeiture should be treated as a criminal case on the ground that the opinion in the case of Boyd v. U. S., 116 U. S. 616, required the forfeiture to be so treated, the Court said:

> "We do not think so. In Boyd's case a criminal offense was directly involved and must have been committed to cause the forfeiture . . .
>
> "In this case no crime was committed."

The above holding is construed as a holding by the Court of Appeals for this Circuit that Section 3116 of Title 26, U. S. C. A., does not define a criminal offense. See also, Anderson v. U. S. (Fifth Circuit), 158 F. 2d 196; U. S. v. One Plymouth Coupe, 88 F. Supp. 93. Since the question was not raised in that case, the case of Goddette v. U. S., 199 F. 2d 331, is not authority to the contrary.

This Court being of the opinion that Section 3116 of Title 26, U. S. C. A., is preventative and remedial rather than criminal, and that it does not define a criminal offense, it is

ORDERED that the motion of the defendant to dismiss the indictment be, and the same is hereby granted, and said indictment is hereby dismissed.

This the 21st day of October, 1953.

(S.) BOYD SLOAN,
United States District Judge.

☆ U. S. GOVERNMENT PRINTING OFFICE 1953 284022 716

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In the Supreme Court of the United States

October Term, 1953

No. 500

UNITED STATES OF AMERICA, *Appellant*

v.

FLOYD DIXON

On Appeal from the United States District Court for the Northern District of Georgia

---

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the District Court (R. 1-2) has not been reported.

JURISDICTION

The order of the District Court dismissing the indictment was entered on October 21, 1953 (R. 1-2). The United States filed its notice of appeal to this Court on November 19, 1953 (R. 2). Prob-

able jurisdiction was noted by this Court on January 11, 1954 (R. 6). The jurisdiction of this Court to review on direct appeal the order of the District Court dismissing an indictment, based on a construction of a statute upon which the indictment was founded, is conferred by 18 U.S.C. 3731. See also Rules 37(a)(2) and 45(a), F. R. Crim. P.

QUESTION PRESENTED

Whether the statute on which the indictment was founded, providing in Section 3115 of the Internal Revenue Code that violation of "any of the provisions of this part" shall be punishable by fine and imprisonment, and providing in Section 3116 of the same part that it "shall be unlawful" to possess property "intended for use in violating the provisions of this part, or the internal-revenue laws," defines a criminal offense.

STATUTORY PROVISIONS INVOLVED

Sections 3115 and 3116 of the Internal Revenue Code (53 Stat. 1, 362, Title 26, United States Code) provide:

> Sec. 3115. PENALTIES
>
> (a) *Violations as to operation of plants* or *unlawful withdrawal of taxable alcohol.* Whoever operates an industrial alcohol plant or a denaturing plant without complying with the provisions of this part and lawful regulations made thereunder, or whoever withdraws or at-

tempts to withdraw or secure tax free any alcohol subject to tax, or whoever otherwise violates any of the provisions of this part or of regulations lawfully made thereunder shall be liable, for the first offense, to a penalty of not exceeding $1,000, or imprisonment not exceeding thirty days, or both, and for a second or cognate offense to a penalty of not less than $100 nor more than $10,000, and to imprisonment of not less than thirty days nor more than one year. It shall be lawful for the Commissioner in all cases of second or cognate offense to refuse to issue for a period of one year a permit for the manufacture or use of alcohol upon the premises of any person responsible in any degree for the violation.

(b) *Violations in general.* Any person violating the provisions of this part or of any regulations issued thereunder, for which offense a special penalty is not prescribed, shall be liable to the penalty or penalties prescribed in subsection (a). It shall be the duty of the prosecuting officer to ascertain, in the case of every violation of this part or the regulations made thereunder, for which offense a special penalty is not prescribed, whether the defendant has been previously convicted and to plead the prior conviction in the affidavit, information, or indictment.

(c) *Previous conviction.* If any act or offense is a violation of this part, and also of any other law in regard to the manufacture or taxation of, or traffic in, intoxicating liquor, a conviction for such act or offense under the one shall be a bar to prosecution therefor under the other.

Sec. 3116. FORFEITURES and SEIZURES

It shall be unlawful to have or possess any liquor or property intended for use in violating the provisions of this part, or the internal-revenue laws, or regulations prescribed under such part or laws, or which has been so used, and no property rights shall exist in any such liquor or property. A search warrant may issue as provided in title XI of the Act of June 15, 1917, 40 Stat. 228 (U.S.C. Title 18, §§ 611-633), for the seizure of such liquor or property. Nothing in this section shall in any manner limit or affect any criminal or forfeiture provision of the internal-revenue laws, or of any other law. The seizure and forfeiture of any liquor or property under the provisions of this part, and the disposition of such liquor or property subsequent to seizure and forfeiture, or the disposition of the proceeds from the sale of such liquor or property, shall be in accordance with existing laws or those hereafter in existence relating to seizures, forfeitures, and disposition of property or pro-

ceeds, for violation of the internal-revenue laws.

STATEMENT

On September 9, 1953, an indictment in one count charging appellee with violation of Sections 3115 and 3116 of the Internal Revenue Code was returned in the United States District Court for the Northern District of Georgia. The indictment alleged that on or about May 4, 1953, appellee wilfully and knowingly possessed "800 pounds of sugar, two 50-gallon wood doubling barrels, one metal cap, one heater box and mash pipe, the same being property intended for use in the manufacture and production of non-tax-paid distilled spirits, in violation of the Internal Revenue Laws with respect to such distilled spirits * * *." (R.1.)

The District Court dismissed the indictment on the sole ground that Section 3116 is "preventative and remedial rather than criminal, and that it does not define a criminal offense * * *." (R. 1-2.) The case is here on a direct appeal under the Criminal Appeals Act, 18 U.S.C. 3731.

SPECIFICATION OF ERRORS TO BE URGED

The District Court erred:

1. In holding that the statutory provisions on which the indictment was founded do not define a criminal offense.

2. In dismissing the indictment.

SUMMARY OF ARGUMENT

Section 3115 provides specified penalties of fine or imprisonment, or both, for violation of "any of the provisions of this part." The "part" of the Internal Revenue Code in which Section 3115 appears also includes Section 3116, which provides that it shall be "unlawful" to possess property intended for use in violating the provisions of that part or the internal-revenue laws. On the face of the statute, therefore, it is clear that violation of Section 3116 is a criminal offense to which the penalties prescribed in Section 3115 are applicable.

There is nothing unusual in legislation which in one section makes certain acts unlawful and in another prescribes criminal penalties for such acts. Nor is it uncommon for Congress to provide both criminal and civil sanctions for the same unlawful conduct. Hence it is of no consequence here that Section 3116 also provides for forfeiture, in a civil proceeding, of property intended for use in violating the internal revenue laws.

The conclusion that Section 3115 makes violation of Section 3116 a criminal offense is confirmed by a uniform line of judicial decisions extending back to 1919, when the National Prohibition Act, containing substantially similar provisions, was enacted. This construction is also supported by the meager relevant materials in the legislative history.

ARGUMENT

SECTIONS 3115 AND 3116 OF THE INTERNAL REVENUE CODE CLEARLY DEFINE A CRIMINAL OFFENSE.

1. The Plain Statutory Language.

The indictment in this case was founded on Sections 3115 and 3116 of the Internal Revenue Code (*supra*, pp. 2-5), which appear in the Code under Subtitle B ("Miscellaneous Taxes"), Chapter 26 ("Liquor"), Subchapter C ("Industrial Alcohol"), Part II ("Industrial Alcohol Plants").

Section 3115, captioned "Penalties", provides in subsection (a) that "Whoever operates an industrial alcohol plant" illegally, etc., "or whoever otherwise violates any of the provisions of this part", shall be liable to specified penalties of fine and imprisonment. Subsection (b) of Section 3115, captioned "Violations in general", provides that "Any person violating the provisions of this part or of any regulation issued thereunder, for which offense a special penalty is not prescribed, shall be liable to the penalty or penalties prescribed in subsection (a). * * *"

The next succeeding section, also in Part II, is Section 3116, captioned "Forfeitures and Seizures", which provides: "It shall be unlawful to have or possess any liquor or property intended for use in violating the provisions of this part, or the internal-revenue laws, or regulations prescribed under such part or laws, or which has been so used, and no property rights shall exist in any such liquor or property. * * *"

The indictment here (R. 1) charged that appellee, in violation of Sections 3116 and 3115, "unlawfully, wilfully and knowingly" possessed certain specified articles of property (sugar, barrels, distilling equipment, etc.), "intended for use in the manufacture and production of non-tax-paid distilled spirits, in violation of the Internal Revenue Laws with respect to such distilled spirits * * *." The district court held, as the sole ground for dismissal of the indictment, that Section 3116 "is preventative and remedial rather than criminal, and that it does not define a criminal offense" (R. 2). This holding, it is respectfully submitted, is erroneous and contrary to the plain, unambiguous language of the statute.

If Section 3116 stood alone, there would be room for argument that the only sanction for the unlawful possession of property intended for use in violating the internal revenue laws is forfeiture and seizure. The fundamental error in the district court's ruling, however, is that it completely fails to take into account the explicit provision in Section 3115 (not mentioned in the opinion below, R. 1-2) that violation of "any of the provisions of this part" (which necessarily includes Section 3116) is a criminal offense punishable by specified criminal penalties of fine and imprisonment.

The fact that Section 3116 provides an additional remedy of forfeiture of the property does not negate the fact that the proscribed conduct

is declared "unlawful" by that section and hence is a violation of "the provisions of this part" punishable under Section 3115. It is a commonplace in the law that a criminal act can also result in forfeiture of the property involved. *Helvering* v. *Mitchell,* 303 U. S. 391, 399-400; *e.g.,* 18 U.S.C. 43, 44, 544, 545, 548; 19 U.S.C. 1460; 21 U.S.C. 188g, l; 26 U.S.C. 2803(f),(g), 2806, 2810, 3159, 3321. Since violation of Section 3116 is made a crime by Section 3115, it is of no significance that the former section is captioned "Forfeitures and Seizures", particularly since the latter is headed "Penalties." Any possible contrary implication is precluded by the specific provision of Section 3116 that:

> Nothing in this section shall in any manner limit or affect any criminal or forfeiture provisions of the internal-revenue laws, or of any other law.

The technique of legislative draftsmanship by which certain acts are made unlawful by one section of a statute and criminal penalties prescribed by another is, of course, not uncommon. Thus, Section 15 of the Fair Labor Standards Act (29 U.S.C. 215) makes it unlawful for any person to violate certain other sections of the Act, and Section 16(a) imposes a criminal penalty on any person wilfully violating Section 15. In the Internal Revenue Code itself, with respect to narcotics, Sections 2553 and 2554 make certain acts unlaw-

ful, the punishment for which is prescribed by Section 2557(b). The same pattern was followed in the National Prohibition Act (see *Page* v. *United States*, 278 Fed. 41, 44 (C.A. 9), certiorari denied, 258 U. S. 627), and has been carried over into the successor provisions of the Internal Revenue Code dealing with liquor.

2. The Consistent Judicial Construction.

The plain language of Sections 3115 and 3116 has apparently discouraged any past effort to litigate the contention that these provisions do not create a criminal offense. Except for the decision below, it has since 1919 been consistently held or assumed, both as to these sections and their substantially identical predecessors in the National Prohibition Act of 1919 and the Liquor Law Repeal and Enforcement Act of 1935,[1] that these pro-

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[1] Section 29 of Title II of the National Prohibition Act of October 28, 1919, 41 Stat. 305, 316, provided:

> * * * Any person * * * who * * * violates any of the provisions of this title, for which offense a special penalty is not prescribed, shall be fined * * * or be imprisoned * * *.

Section 25 of Title II (41 Stat. 315) provided:

> It shall be unlawful to have or possess any liquor or property designed for the manufacture of liquor intended for use in violating this title or which has been so used, and no property rights shall exist in such liquor or property. A search warrant may issue * * *, and such liquor, the containers thereof, and such property

visions define a criminal offense. See *e.g., Page* v. *United States,* 278 Fed. 41 (C.A. 9), certiorari denied, 258 U.S. 627; *Reynolds* v. *United States,* 280 Fed. 1 (C.A. 6); *Morgan* v. *United States,* 294 Fed. 82 (C.A. 4); *Adamson* v. *United States,* 296 Fed. 110 (C.A. 5); *Tritico* v. *United States,* 4 F. 2d 664 (C.A. 5); *Patrilo* v. *United States,* 7 F. 2d 804 (C.A. 8); *Godette* v. *United States,* 199 F. 2d 331 (C.A. 4). Although no detailed tabulation exists, at least hundreds of criminal prosecutions were successfully brought under Sections 25 and 29 of Title II of the National Prohibition Act.

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so seized shall be subject to such disposition as the court may make thereof.

Cf. Section 15 of Title III (relating to industrial alcohol), 41 Stat. 321-322, which provided that:

> * * * whoever otherwise violates any of the provisions of this title or of regulations lawfully made thereunder shall be liable * * * to a penalty [of fine and imprisonment.]

In 1935, following repeal of the Eighteenth Amendment, Congress enacted the Liquor Law Repeal and Enforcement Act, 49 Stat. 872, which was designed both to repeal the obsolete provisions of the National Prohibition Act and to supplement Title III of that Act, relating to industrial alcohol, with so much of the subsisting provisions of Title II as would be of assistance in administering and enforcing Title III. See H. Rep. 1601, 74th Cong., 1st Sess., pp. 1-2; S. Rep. 1330, 74th Cong., 1st Sess., pp. 1-2.

Section 10 of the Liquor Law Repeal and Enforcement Act (49 Stat. 875) provided:

> Any person violating the provisions of this title or of any regulations issued thereunder, for which offense a special penalty is not prescribed, shall be liable to the

See, *e.g.*, cases collected in 27 U.S.C.A., secs. 39, 46.

In 1950, the contention urged here by appellee was raised, apparently for the first time, by a motion to dismiss a similar indictment in *United States* v. *Harvin*, 91 F. Supp. 249 (E.D. Va), and was squarely rejected. The district court there stated (at pp. 250-251):

> In the opinion of the Court section 3116 should be construed as defining both a criminal offense and a forfeiture. Provisions for the two are independent and distinct, however. They are not inseparable, as are felony and forfeiture at common law, or as they were

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penalty or penalties prescribed in section 15 of Title III of the National Prohibition Act. * * *

Section 8 of that Act (49 Stat. 874-875) provided:

> It shall be unlawful to have or possess any liquor or property intended for use in violating the provisions of this title, or of Title III of the National Prohibition Act, or the internal-revenue laws, or regulations prescribed under such title or laws, or which has been so used, and no property rights shall exist in any such liquor or property. A search warrant may issue * * * for the seizure of such liquor or property. Nothing in this section shall in any manner limit or affect any criminal or forfeiture provision of the internal-revenue laws, or of any other law. * * *

Sections 10 and 8 of the Liquor Law Repeal and Enforcement Act were incorporated in substance, without any material change in phraseology, in Sections 3115 and 3116, respectively, of the Internal Revenue Code enacted into law on February 10, 1939 (53 Stat. 1, 362). *Supra*, pp. 2-5.

made by the statute in *Boyd* v. *United States,* 116 U.S. 616, 6 S. Ct. 524, 29 L. Ed. 746. The existence of the forfeiture clauses does not exclude or extinguish the existence of the criminal prohibition. * * *

The cases of *Kent* v. *U.S.,* 5 Cir., 157 F. 2d 1 and *U.S.* v. *Windle,* 8 Cir., 158 F. 2d 196, both supra, involved only proceedings for forfeiture. Obviously the proceedings in each of them invoked exclusively the civil, in rem steps authorized under 3116, and plainly the courts there were sound in their holdings that the constitutional safeguards of criminal trials were not applicable. They were dealing only with the civil impact of 3116. *U.S.* v. *Eliott Hall Farm,* D.C.N.J., 42 F. Supp. 235 was of the same character.

Similar contentions were also rejected in *United States* v. *Blair,* 97 F. Supp. 718 (E.D. Ky.), and *Shively* v. *United States* (W.D. Va.), decided November 11, 1953.[2]

Kent v. *United States,* 157 F. 2d 1 (C.A. 5), certiorari denied, 329 U.S. 785, upon which the district court in the instant case relied, is plainly not apposite here. That case involved a civil forfeiture proceeding under Section 3116, not a criminal prosecution under Section 3115. There the

[2] An appeal taken in the latter case was argued before the Court of Appeals for the Fourth Circuit on January 4, 1954.

claimant of the property failed to take the stand, and the question was whether the district court could, in the circumstances of the case, draw any adverse inferences from his failure to testify. The Court of Appeals held that the Fifth Amendment was inapplicable. The court stated:

> This is not a criminal case but a civil case * * *. His silence may well count against him, as against any other civil litigant. * * * This is not such a [criminal] trial. Kent is not here charged with any crime or offense. This property is alleged to be forfeited under 26 U.S.C.A. Int. Rev. Code, § 3116, because "intended for use in violating the provisions * * * of the internal-revenue laws." * * * The seizure for forfeiture here is not in consequence of or in punishment for a crime, but to prevent one. The proceeding is preventive and remedial, rather than punitive or criminal.

Read in their context, the excerpts from the *Kent* opinion quoted by the district court here (R. 1-2) thus furnish no support for the decision below. That case holds only that a forfeiture proceeding under Section 3116 is remedial and civil in nature. Cf. *Helvering* v. *Mitchell,* 303 U.S. 391, 400-404; *United States ex rel. Bilokumsky* v. *Tod,* 263 U.S. 149, 153-155. It does not hold that conduct declared unlawful by Section 3116 is not a crime punishable under Section 3115.

3. The Supporting Legislative History.

In view of the plain language of the statute and the uniform judicial interpretation it has received, it would require the most persuasive kind of legislative history to raise even a doubt as to the question here presented. But we have been unable to find anything in the legislative history of Sections 3115 and 3116 which furnishes support for the district court's construction. On the contrary, such gleanings as may be gathered from the scanty legislative history point to the error of the decision below.

As has been shown, Sections 3115 and 3116 are derived from similar provisions in the National Prohibition Act of 1919 and the Liquor Law Repeal and Enforcement Act of 1935. (See p. 10, footnote 1, *supra.*) During the hearings on the latter act before the Senate Committee on the Judiciary, Mr. V. Simonton, a representative of the Treasury Department who had participated in the drafting of the bill, described the scope of Section 8 (predecessor to Section 3116) as follows:

> Mr. Simonton: The old act read, in section 25:
>
> "It shall be unlawful to have or possess any liquor or property intended for use in violating the provisions of this title."
>
> We have extended that to include the possession of liquor or property intended for use

> in violating the provisions of title III of the National Prohibition Act and of the internal-revenue laws. For the first time we have proposed legislation condemning an attempt to violate the internal-revenue laws. At the present time it is not an *offense* against the United States to attempt to violate the internal-revenue laws. It is a conspiracy, of course, but an attempt to do so is not strictly a violation of the law. [Hearings, Sen. Committee on the Judiciary, 74th Cong., 1st Sess., on S. 3336, p. 11. Italics supplied.]

Similarly, on the floor of the Senate, Senator Ashurst, who was in charge of the legislation, stated: "One of the new features of the bill is that it *penalizes* the possession of illegal liquor or illegal apparatus which is intended to be used in violating any liquor law." (79 Cong. Rec. 13409; italics supplied.) This language aptly describes provisions for criminal penalties as well as civil forfeitures, and not merely the latter.

CONCLUSION

For the reasons stated, it is respectfully submitted that the indictment states an offense, and that the judgment of the district court dismissing the indictment should be reversed.

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SUPREME COURT OF THE UNITED STATES

No. 500.—October Term, 1953.

United States of America, Appellant, *v.* Floyd Dixon.	On Appeal From the United States District Court for the Northern District of Georgia.

[April 5, 1954.]

Mr. Justice Clark delivered the opinion of the Court.

The sole question here is whether §§ 3116 and 3115 of the Internal Revenue Code make it a criminal offense to possess property intended for use in producing nontax-paid distilled spirits in violation of the Code. Appellee was indicted under these sections for wilfully and knowingly possessing 800 pounds of sugar and parts of a still for the proscribed purpose. On motion the District Court, relying on dictum in a court of appeals decision,[1] dismissed the indictment on the ground that § 3116 is "preventative and remedial rather than criminal, and that it does not define a criminal offense." The Government appealed directly to this Court under the Criminal Appeals Act, 18 U. S. C. § 3731. 346 U. S. 930.

Section 3116 of the Internal Revenue Code is captioned "Forfeitures and Seizures," and provides in pertinent part: "It shall be unlawful to have or possess any liquor

[1] *Kent* v. *United States*, 157 F. 2d 1 (1946). See also *United States* v. *Windle*, 158 F. 2d 196 (1946). In those cases the Government had invoked only the forfeiture provisions of the section; as applied to such a civil proceeding, characterization of the section as preventive and remedial was obviously accurate. The two reported cases which previously have faced squarely the present question have upheld the indictments. *United States* v. *Blair*, 97 F. Supp. 718 (1951); *United States* v. *Harvin*, 91 F. Supp. 249 (1950). See also *Godette* v. *United States*, 199 F. 2d 331 (1952), in which the present issue apparently was not raised.

or property intended for use in violating the provisions of this part, or the internal-revenue laws . . . and no property rights shall exist in any such liquor or property . . . . Nothing in this section shall in any manner limit or affect any criminal or forfeiture provision of the internal-revenue laws, or of any other law. . . ." The section also provides for search warrants and for procedure in seizure and forfeiture. Section 3115 bears the caption "Penalties" and provides that anyone violating any of the provisions of "this part" for which offense a special penalty is not prescribed "shall be liable, for the first offense, to a penalty of not exceeding $1,000, or imprisonment not exceeding thirty days, or both . . . ." The two sections are included within the same "part" of the Code.[2]

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[2] Part II ("Industrial Alcohol Plants") of Subchapter C ("Industrial Alcohol") of Chapter 26 ("Liquor"). The full text of the two sections is as follows:

"SEC. 3115. PENALTIES

"(a) *Violations as to operation of plants* or *unlawful withdrawal of taxable alcohol.* Whoever operates an industrial alcohol plant or a denaturing plant without complying with the provisions of this part and lawful regulations made thereunder, or whoever withdraws or attempts to withdraw or secure tax free any alcohol subject to tax, or whoever otherwise violates any of the provisions of this part or of regulations lawfully made thereunder shall be liable, for the first offense, to a penalty of not exceeding $1,000, or imprisonment not exceeding thirty days, or both, and for a second or cognate offense to a penalty of not less than $100 nor more than $10,000, and to imprisonment of not less than thirty days nor more than one year. It shall be lawful for the Commissioner in all cases of second or cognate offense to refuse to issue for a period of one year a permit for the manufacture or use of alcohol upon the premises of any person responsible in any degree for the violation.

"(b) *Violations in general.* Any person violating the provisions of this part or of any regulations issued thereunder, for which offense a special penalty is not prescribed, shall be liable to the penalty or

The appellant's position is that § 3115 makes violation of any of the provisions of "this part" a criminal offense punishable by fine and imprisonment; § 3116 contains a provision making it unlawful to possess property intended for use in violating the provisions of that part or the internal revenue laws; hence the indictment alleging a violation of §§ 3116 and 3115 by such possession charges a crime. We agree and so hold. We think the plain language of the two sections read together can lead only to the conclusion that the acts proscribed in § 3116 not only may result in forfeiture but likewise are made crim-

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penalties prescribed in subsection (a). It shall be the duty of the prosecuting officer to ascertain, in the case of every violation of this part or the regulations made thereunder, for which offense a special penalty is not prescribed, whether the defendant has been previously convicted and to plead the prior conviction in the affidavit, information, or indictment.

"(c) *Previous conviction.* If any act or offense is a violation of this part, and also of any other law in regard to the manufacture or taxation of, or traffic in, intoxicating liquor, a conviction for such act or offense under the one shall be a bar to prosecution therefor under the other.

"SEC. 3116. FORFEITURES and SEIZURES

"It shall be unlawful to have or possess any liquor or property intended for use in violating the provisions of this part, or the internal-revenue laws, or regulations prescribed under such part or laws, or which has been so used, and no property rights shall exist in any such liquor or property. A search warrant may issue as provided in Title XI of the act of June 15, 1917, 40 Stat. 228, for the seizure of such liquor or property. Nothing in this section shall in any manner limit or affect any criminal or forfeiture provision of the internal-revenue laws, or of any other law. The seizure and forfeiture of any liquor or property under the provisions of this part, and the disposition of such liquor or property subsequent to seizure and forfeiture, or the disposition of the proceeds from the sale of such liquor or property, shall be in accordance with existing laws or those hereafter in existence relating to seizures, forfeitures, and disposition of property or proceeds, for violation of the internal-revenue laws."

inal and punishable under the general penalty provisions of § 3115.

The sections here involved were borrowed, with changes insignificant for present purposes, from the National Prohibition Act of 1919, 41 Stat. 305 *et seq.* There the sections appeared as §§ 25 (compare § 3116) and 29 (compare § 3115) of Title II, and presented a statutory pattern virtually identical to the present one. It is most persuasive that the courts consistently upheld criminal prosecutions brought under these sections for the analogous act of possessing property designed for the manufacture of liquor intended for use in violation of Title II of the Prohibition Act.[3]

This consistency of interpretation, followed by Congress' utilization in the Code of the same provisions, is also helpful in dealing with the limitation in § 3115 which makes the penalties of that section applicable only where no "special penalty" is provided for the offense. As a *de novo* proposition it might be argued that in § 3116 a special penalty, forfeiture, is provided. But this argument was available with equal force under the Prohibition Act and appears to have barred no prosecution. Moreover, § 3116 contains a provision that "Nothing in this section shall in any manner limit or affect any criminal . . . provision of the internal revenue laws." This would seem to settle the point.

Clearly Congress may impose both a criminal and a civil sanction in respect to the same act; this is neither unusual nor constitutionally objectionable. See *Helvering* v. *Mitchell*, 303 U. S. 391, 399–400 (1938). Likewise it is common in drafting legislation to declare certain acts

[3] *E. g., Reynolds* v. *United States*, 280 F. 1 (1922); *Adamson* v. *United States*, 296 F. 110 (1924); *Staker* v. *United States*, 5 F. 2d 312 (1925); *Patrilo* v. *United States*, 7 F. 2d 804, 805 (1925). Compare *Page* v. *United States*, 278 F. 41 (1922).

unlawful in one section and set forth penalties for their commission in another.[4]

The only suggestion on the face of the statute that § 3116 was meant to be remedial and nothing more comes from its caption, "Forfeitures and Seizures," supplied by the codifiers in 1939. But in enacting the Code Congress provided that "The arrangement and classification of the several provisions of the Internal Revenue Title have been made for the purpose of a more convenient and orderly arrangement of the same, and, therefore, no inference, implication or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or provision or portion thereof, nor shall any outline, analysis, cross reference, or descriptive matter relating to the contents of said Title be given any legal effect." 53 Stat. 1a. To accomplish its primary purpose of bringing together all operative revenue laws and making them more comprehensible, the Code made "liberal use of catchwords." [5] Typically, § 3116 is included in a subchapter entitled "Industrial Alcohol" and in a part entitled "Industrial Alcohol Plants"; yet even under a most narrow interpretation of its terms the section is in no sense limited to industrial alcohol.

So far as light is to be had from legislative history, it is meager and inconclusive, in no way militating against the meaning we attribute to the statute.

Reversed.

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[4] *E. g.*, Fair Labor Standards Act, 29 U. S. C. §§ 215, 216; Internal Revenue Code (narcotics), 26 U. S. C. §§ 2553, 2554, 2557.

[5] H. R. Rep. No. 6, 76th Cong., 1st Sess. 3; S. Rep. No. 20, 76th Cong., 1st Sess. 3.

SUPREME COURT OF THE UNITED STATES

No. 500.—October Term, 1953.

United States of America, Appellant, *v.* Floyd Dixon.	On Appeal From the United States District Court for the Northern District of Georgia.

[April 5, 1954.]

Mr. Justice Black, with whom Mr. Justice Douglas, Mr. Justice Jackson and Mr. Justice Minton concur, dissenting.

Respondent was indicted for violating §§ 3116 and 3115 of the Internal Revenue Code by having in his possession sugar, wooden barrels, a metal cap, a heater box and mash pipe, all "intended for use" in unlawfully evading liquor taxes. The District Court dismissed the indictment for failure to charge a crime. I agree. The indictment did clearly charge a violation of § 3116 which makes it "unlawful" to hold property for such an intended use. But § 3116 does not make "unlawful" possession a crime; the only sanction it contains is forfeiture. This Court nevertheless holds that possession for such an "unlawful" purpose is made a crime by § 3115 (b). That section does not of itself define a crime; it merely authorizes fine or imprisonment for violations of other provisins of the Act which do not themselves prescribe a "special penalty." Hence the general penalties of § 3115 cannot apply to violations of § 3116, because this latter section prescribes its own "special penalty"—seizure and forfeiture of property. This forfeiture is plainly a penalty since there is no practical difference between taking a man's property by forfeiture and taking his money by a fine. And where Congress has specifically provided a

property penalty I cannot agree to add a money penalty by dubious implication.

The accepted practice of construing criminal statutes narrowly should be especially appropriate here because of the unusual nature of the "crime" involved. The Court's interpretation of § 3115 makes possession of innocent property, such as an automobile, a crime if the possessor *intends* to use it illegally, even if he has not done so. Guilt is made to depend wholly on what is within the defendant's mind. Congress may well have been unwilling to apply sanctions other than forfeiture to an unexpressed intention to do something that has not even been attempted.